



LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2018-4]

Copyright Office Fees

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Copyright Office is proposing the adoption of a new fee schedule. The proposed fees would help the Office recover a significant part, though not the whole, of its costs. The Office is providing an opportunity to the public to comment on the proposed changes before it submits the fee schedule to Congress.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on

[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], 2018.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <https://www.copyright.gov/policy/feestudy2018>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, Deputy General Counsel, by email at *resm@loc.gov*, or Julie Saltman, Assistant General Counsel, by email at *jusa@loc.gov*, or either by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: The Copyright Office is proposing the establishment of a new fee schedule for Copyright Office services. Below, the Office describes the legal authority for establishment and adjustment of its fees, describes the overarching methodology employed by the Office in studying its costs and establishing a new fee schedule, and describes and provides justification for each of the Office’s proposed fee adjustments.

I. Statutory Framework

The Copyright Act provides for the funding of Copyright Office operations through user fees to cover its reasonable costs. The main provision authorizing the establishment and collection of such fees is 17 U.S.C. 708. Section 708(a) specifies that “[f]ees shall be paid to the Register of Copyrights” for the following services:

- (1) on filing an application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made;
- (2) on filing each application for registration of a claim for renewal of a subsisting copyright under section 304(a), including the issuance of a certificate of registration if registration is made;
- (3) for the issuance of a receipt for a deposit under section 407;
- (4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document;

- (5) for the filing, under section 115(b), of a notice of intention to obtain a compulsory license;
- (6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author;
- (7) for the issuance, under section 706, of an additional certificate of registration;
- (8) for the issuance of any other certification;
- (9) for the making and reporting of a search as provided by section 705, and for any related services;
- (10) on filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 119 or 122; and
- (11) on filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 111.

Fees for the services described in paragraphs (1) through (9) above are established in accordance with the following process. The Register must first “conduct a study of the costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and the provision of services.” 17 U.S.C. 708(b)(1). The study must “consider the timing of any adjustment in fees and the authority to use such fees consistent with the budget.” *Id.* On the basis of that study, the Register may “adjust fees” by regulation “to not more than that necessary to cover the reasonable costs incurred by the Copyright Office for” its services “plus a reasonable inflation adjustment to account for any estimated increase in costs.” 17 U.S.C. 708(b)(2). The Register must then prepare a proposed fee schedule and submit it with the accompanying economic analysis to

Congress. *Id.* 708(b)(5). The proposed schedule may go into effect after the end of 120 days after submitting it to Congress unless, within that 120 day period, Congress enacts a law stating in substance that Congress does not approve the schedule. *Id.*

Importantly, section 708 also requires that fees under section 708(a)(1)-(9) “be fair and equitable and give due consideration to the objectives of the copyright system.” *Id.* 708(b)(4). This mandate makes clear that the Copyright Office must review more than the reasonable costs of services provided; instead, the Office must take into account the public interest in the nation’s copyright scheme. In assessing these fees, the Register thus has “wide discretion to adjust Copyright Office fees by regulation.” Melville B. Nimmer & David Nimmer, *Nimmer on Copyright*, secs. 7.24, 7-232 (2013).

The Copyright Act also authorizes the Register of Copyrights to establish fees for services other than those listed in paragraphs (1) through (9) of section 708(a). Though not subject to the procedural requirements of section 708(b), these fees are often evaluated and adjusted as part of the fee study mandated by section 708(b)—as is the case here. First, paragraphs (10) and (11) of section 708 provide that the Copyright Office’s Licensing Division may charge filing fees for the statements of account that cable and satellite companies must submit under the statutory licenses in sections 111, 119, and 122 for the secondary transmissions of primary broadcast television transmissions. 17 U.S.C. 708(a)(10), (11). These statement of account filing fees must “be reasonable and may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the Copyright Office for the collection and administration of the statements of account and any royalty fees deposited with such statements.” *Id.* 708(a). Second, section 708 authorizes the Register to set fees for any “other services,” such as

“preparing copies of Copyright Office records,” but these fees must be “based on the cost of providing the service.” *Id.* 708(a). Finally, various other provisions of the Copyright Act outside section 708 authorize the establishment of fees for specific services; all require fees to be set based on costs.¹

In 1997, Congress amended section 708 specifically to grant the Register both wide discretion and permanent authority to set fees for the Office. *See* Pub. L. 105-80, 111 Stat. 1529, 1532 (1997); H. Rep. No. 105-25, at 16 (Mar. 17, 1997). Accordingly, the fee statute generally instructs the Register to set fees at a level that covers the Copyright Office’s overall costs.² In fulfilling that direction, the Office may set fees that account for indirect costs of providing services, and to use fee revenue from some services to offset losses from others for which the fees are kept low to encourage the public to take advantage of the service.

II. Cost Study

Congress first gave the Register of Copyrights the authority to set and adjust Copyright Office fees in 1997. 17 U.S.C. 708(b) (1997). Since then, the Office has

¹ *See, e.g.*, 17 U.S.C. 104A(e)(1)(C) (“The Register of Copyrights is authorized to fix reasonable fees based on the costs of receipt, processing, recording, and publication of notices of intent to enforce a restored copyright and corrections thereto.”); *id.* 512(c)(2) (requiring the Register to “maintain a current directory of agents” designated to receive notifications of claimed infringement, and authorizing the “payment of a fee by service providers to cover the costs of maintaining the directory”).

² *See* 17 U.S.C. § 708(b)(1), (2) (providing that the Register “may . . . adjust fees to not more than that necessary to cover the reasonable costs incurred by the Copyright Office” for “the registration of claims, the recordation of documents, and the provision of services”). In only limited circumstances does the statute specify that the fees for a specific service may not exceed the cost of providing that service. For instance, the statute specifies that the statement of account filing fees under paragraphs (10) and (11) of section 708(a) “may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the Copyright Office for the collection and administration of the statements of account.”

adjusted its fees every three to five years. The last such adjustment went into effect in May 2014.³

The Office initiated a new cost study in June 2017, contracting with a private accounting and consulting firm, Booz Allen Hamilton (“Booz Allen”), to analyze the Office’s current as well as any expected future costs.⁴ In addition to studying the Office’s costs, Booz Allen examined the Office’s current fee structure, and provided an initial proposed fee schedule aimed to meet the Office’s cost-recovery goals, as well as a fee modeling tool that the Office could use to adjust Booz Allen’s initial proposed fee schedule to account for other policy goals.⁵ Booz Allen’s fee model takes into account price elasticity of demand. The elasticity estimates are based on an analysis of the Office’s data on price elasticity as well as an independent elasticity analysis based on raw data from the Office. Booz Allen’s study is provided on the rulemaking webpage, and describes in detail the methodology employed to assess the Office’s costs and formulate the initial proposed fee schedule.⁶

1. Copyright Office Costs

In assessing the costs of the Office’s various functions, Booz Allen used an industry-standard, activity-based costing (ABC) model, using overhead, compensation,

³ See 79 FR 15910 (Mar. 24, 2014).

⁴ See 17 U.S.C. 708(b) (2) (permitting fees to “account for any estimated increase in costs”).

⁵ See 17 U.S.C. 708(b)(4) (“Fees established under this subsection shall be fair and equitable and give due consideration to the objectives of the copyright system”).

⁶ See Booz Allen Hamilton, *2017 Fee Study Report* (Dec. 2017), available at <https://www.copyright.gov/policy/feestudy2018> (“Booz Allen Study”).

and volume as primary cost drivers; the particulars of that model are detailed in the Booz Allen Study.⁷

Some of the key data Booz Allen used in its study was from Fiscal Year 2016, although more current data was available for certain other variables, like salaries and employee estimates of time spent performing fee-related tasks. As the Booz Allen Study acknowledged, however, after Fiscal Year 2016 the Office “engaged in a variety of regulatory reforms that are projected to increase the efficiency of various registration, recordation, or licensing activities,” and that “[b]ecause the ABC model is necessarily based on retrospective data, Booz Allen understands that the Office may choose to make adjustments to the cost-based fee recommendations to account for predicted changes in activity efficiency.”⁸

Booz Allen’s cost assessment also included anticipated expenses associated with the Office’s ongoing information technology and business process modernization efforts. These efforts are generally described in two documents. In February 2016, the Copyright Office released its *Provisional Information Technology Modernization Plan and Cost Analysis* (“Provisional IT Plan”).⁹ Then, in September 2017, the Library of Congress and Copyright Office jointly issued a *Modified U.S. Copyright Office Provisional IT Modernization Plan* (“Modified IT Plan”) describing a centralized model for updating the

⁷ Booz Allen Study at 7-8.

⁸ Booz Allen Study at 5.

⁹ U.S. Copyright Office, *Provisional Information Technology Modernization Plan and Cost Analysis* (Feb. 29, 2016), available at <http://www.copyright.gov/reports/itplan/technology-report.pdf>.

Office's IT systems.¹⁰ Based on data compiled by the Library of Congress for the modified provisional IT plan, the Library's Office of the Chief Information Officer and the Copyright Office have assessed the costs of modernization over the next five years to be approximately \$12-\$15 million per year.

In total, the Booz Allen study projected the Office's base year costs to be approximately \$67.7 million, and estimated that costs will increase by approximately 1.8% in each subsequent year for the next five years, assuming no staffing changes. A detailed list of the five-year costs is found at Appendix A of the Booz Allen Study.¹¹

2. Booz Allen's Initial Proposed Fee Schedule

In establishing a fee schedule, Booz Allen began with the Office's cost-recovery goals. Importantly, the Office has never recovered its full costs from user fees. Instead, the Office has traditionally recovered approximately 60% of its costs through fees; the remainder is provided through appropriated dollars from the U.S. treasury. Consistent with the Office's historical practice, the targeted cost recovery rate in the Booz Allen study was 60% for all costs, except those associated with IT modernization efforts. With respect to modernization costs, the Modified IT Plan noted that "[p]ublic comments to the original Provisional IT Plan were generally supportive of increased fees for enhanced technological services."¹² At the same time, "public comments did not support Copyright IT modernization being fully fee-funded; in fact, many noted that it was premature to determine a fees/appropriated dollar ratio and endorsed the notion that taxpayer support

¹⁰ Library of Congress & U.S. Copyright Office, *Modified U.S. Copyright Office Provisional IT Modernization Plan* (Sept. 1, 2017), available at <http://www.copyright.gov/reports/itplan/modified-modernization-plan.pdf>.

¹¹ Booz Allen Study at 23.

¹² Modified IT Plan at 31.

has an important role in modernizing Office IT systems.”¹³ Anticipating that Congress will continue to support modernization efforts through increased appropriations, the Office’s targeted cost recovery for modernization costs is 50%. (The costs associated with modernizing the Licensing Division’s systems, however, were not considered when calculating the Licensing Division’s fees.)

The Office is often asked why it does not set a goal of full-cost recovery from fees. The answer is that the Office’s primary services—including copyright registration and recordation—are mostly voluntary, and the significantly higher fees needed for total cost recovery would result in less use of those services to the detriment of the public interest in a robust registration system. In economics terms, demand for these services is *elastic*. Simply put, when fees are set too high, potential users—including non-profit or non-commercial users—will be unable or unwilling to pay and simply will stop participating at all and the public record will suffer.

Booz Allen’s fee model accounted for the price elasticity of demand for the Office’s services. As Booz Allen noted, “[t]he vast majority of the Office’s revenue, 86.6%, is generated from fees deemed elastic.”¹⁴ Booz Allen performed its own elasticity analysis using data on copyright registration volume, fee revenue, and fee changes from 1986 to 2018, and validated the resulting figures by referencing economic literature, econometric studies of European trademarks, and the fee setting report of the U.S. Patent and Trademark Office.¹⁵ That analysis found an elasticity measure of -0.32 for the Office’s primary services, including registration and recordation. The analysis predicts,

¹³ *Id.*

¹⁴ Booz Allen Study at 8.

¹⁵ *Id.* at 9.

for instance, that “raising the fee for recordation of a document from \$105 to \$125 would lead to a projected decrease of 662 documents recorded, a decline of 6%.”¹⁶

Significantly, using this validated measure of elasticity, Booz Allen concluded that the goal of full-cost recovery was “impossible to achieve.”¹⁷ Booz Allen instead calculated that the maximum obtainable cost recovery for all of the Office services was 70.4%, with annual revenue of \$47,735,256.¹⁸ At this level of revenue, the Office would not be able to recover its full costs even if the whole cost of IT modernization were funded through taxpayer dollars. Moreover, achieving this rate of cost recovery would be significantly detrimental to the public interest—it would cause a 25% drop in use of Office services, including registration and recordation.¹⁹ Thus, raising the fees to maximize revenue (even short of full cost recovery) would result in a far less robust public record of copyrighted works, and would undermine “the objectives of the copyright system.” 17 U.S.C. 708(b)(4).

At the same time, maintaining fees at a flat level is not an option either, given the increase in Office costs, including the cost of IT modernization. As a result, to maintain a steady level of cost recovery, Booz Allen recommended a weighted average increase of 38% to existing fees across all service categories.²⁰

In recommending individual fees, Booz Allen reviewed the cost per transaction calculated in the ABC model, and then “adjusted [it] to account for external considerations,” including the Office’s guidance regarding the relative demand for Office

¹⁶ *Id.* at 8.

¹⁷ Booz Allen Hamilton, *U.S. Copyright Office, Fee Study, Questions and Answers* (Dec. 2017), available at <https://www.copyright.gov/policy/fees2018> (“Booz Allen Q&A”).

¹⁸ Booz Allen Q&A at 3.

¹⁹ *Id.*

²⁰ Booz Allen Study at 2-3.

services.²¹ To optimize fee recovery, Booz Allen’s schedule recommended below-cost fees for services with relatively elastic demand, and above-cost fees for certain services with relatively inelastic demand. This approach to cross-subsidizing fees is consistent with the authorizing statutes and Congress’s intent in granting the Copyright Office broad fee-setting authority.²² Booz Allen’s initial proposed fee schedule can be found in the Booz Allen Study.²³

III. The Office’s Schedule of Proposed Fees

The Office has independently evaluated and adjusted the Booz Allen schedule, which focused principally on the economic analysis, based on our assessment of fairness, equity, the objectives of the Copyright Act²⁴ and the Office’s policy goals, as well as general guidance from the Office of Management and Budget,²⁵ and the Government Accountability Office.²⁶

Critically, the Office analyzed potential changes to fees under 708(a)(1)-(9) to ensure that they are “fair and equitable and give due consideration to the objectives of the copyright system,” as required by the statute. The voluntary registration and recordation system is vital to a number of national objectives. They facilitate the marketplace for licensing and other valuable uses of works, as well as business transactions that rely on

²¹ *Id.* at 7.

²² See 17 U.S.C. 708(a), (b) (permitting establishment of fees “to cover the reasonable costs incurred by the Copyright Office” for “the registration of claims, the recordation of documents, and the provision of services”).

²³ Booz Allen Study at 23-28.

²⁴ See 17 U.S.C. 708(b)(4) (requiring that fees for services specified in paragraphs (1)-(9) of subsection (a) “be fair and equitable and give due consideration to the objectives of the copyright system”).

²⁵ Office of Mgmt. and Budget, Circular No. A-25 (2017), *available at* <https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf>.

²⁶ U.S. Gov’t Accountability Office, *Federal User Fees: A Design Guide* (May 2008), *available at* <http://www.gao.gov/assets/210/203357.pdf>.

protection of copyrighted works. Additionally, while the system is voluntary in that copyright protection exists independent of registration, registration provides crucial benefits for copyright owners. Before bringing a lawsuit for infringement of a U.S. work, for example, a copyright owner is required to receive either a registration or refusal from the Office. And copyright owners must obtain a timely registration to qualify for certain legal presumptions and to seek statutory damages and attorney's fees in litigation. Ensuring that most copyright owners can register their works thus is very important to providing access to judicial remedies. Due to the public interest inherent in the copyright system, the Office struck a balance between being a prudent fiduciary of public funds and creating a fee schedule that supports the Office's policy goal of promoting creativity and protecting creators' rights.

The following sections set forth the Office's proposed fees, and explain any changes from current fees. In addition, the Office has provided its revised fee model summary on the rulemaking page, which was developed using Booz Allen's fee modeling tool, and provides additional detail regarding the bases for the proposed fee schedule. Although the Office has not set forth specific proposed rule language, the proposed changes would be made to the fee tables that currently appear in 37 CFR 201.3. When it promulgates the final rule, the Office will reorganize the fee tables in that provision to make them easier to read, including by deleting the unnecessary definitions that appear in section 201.3(b).

Overall, the Office has determined that fees should increase an average of 41% to account for inflationary increases and the expected cost of information technology modernization over the next several years. The Office anticipates the higher fees will

decrease overall fee processing by approximately 14% at least temporarily, but that this decrease will be offset by a more appropriate level of cost recovery. In total, the Office estimates that revenues generated by these proposed fees will be roughly \$41 million per year.

A. Registration, Recordation and Related Services

1. Basic Registrations

Section 708(a)(1) requires the payment of fees “on filing each application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made.” 17 U.S.C. 708(a)(1). The Office proposes the following increases to the fees for basic registration applications, to be codified in 37 CFR 201.3(a).

Basic Registrations	Current Fees (\$)	Proposed Fees (\$)	Calculated Cost of Service (\$)
(1) Registration of a claim in an original work of authorship			
Standard Application (electronic only)	55	75	90
Single Application (electronic only)	35	55	86
Paper Application	85	125	118

As the Booz Allen study noted, basic registration applications produce the highest volume of all the Office’s fee generating services; at the same time, examination of those applications is, in aggregate, the costliest activity the Office performs.²⁷ Currently, cost recovery for single and standard applications stands at 51%,²⁸ and has fallen well below the target established during the prior fee study of 71% for electronic claims and 66% for paper

²⁷ Booz Allen Study at 13.

²⁸ *Id.*

applications.²⁹ As explained, however, the Office cannot establish fees at a level that recovers full costs, because demand for these registration services is elastic.

While in the past, the fee for electronic applications was kept artificially low to incentivize electronic filings,³⁰ today the vast majority of registration applications are now filed electronically.³¹ The current cost of processing and examining a Standard Application (\$91) far outstrips the current fee (\$55). The same is true of the Single Application, which has a cost (\$86) not significantly different from the Standard Application. In this context, the Office believes it is appropriate to return the fees for electronic filing to a level more commensurate with the Office's costs, while not unduly disincentivizing the registration of copyrights.

To begin to close the shortfall, the Office is proposing to increase fees to \$75 for Standard Applications to achieve an 83% cost recovery based on current costs. In addition, the Office proposes raising the fee for the electronic Single Application, a special application intended for individual creators who file the simplest types of claims, to \$55, which achieves a 52% cost recovery based on current costs. The latter fee thus represents a significant subsidy intended for smaller creators.

Turning to the paper application, the Office believes it continues to be appropriate to differentiate between paper and electronic applications, given the substantially higher costs of processing paper applications, and as a means of incentivizing use of the electronic system. The Office accordingly proposes a fee of \$125 for paper applications.

The Office has concluded that these proposed fees are “fair and equitable, and give due consideration to the objectives of the copyright system.” 17 U.S.C. 708(b)(4).

²⁹ U.S. Copyright Office, *Proposed Schedule and Analysis of Copyright Fees to Go Into Effect on or About April 1, 2014*, at 15-16 (Nov. 13, 2013), available at <https://www.copyright.gov/docs/newfees/USCOFeeStudy-Nov13.pdf> (“2014 Fee Study”).

³⁰ 2014 Fee Study at 16 (noting that “after the launch of the eCO system, the current fee of \$35 was lowered from the then-existing fee of \$45 to incentivize electronic filings”).

³¹ See U.S. Copyright Office, *Registration Processing Times*, <https://www.copyright.gov/registration/docs/processing-times-faqs.pdf> (last visited Apr. 5, 2018).

2. *Group Registrations*

In general, each registration application should be limited to a unitary “work of authorship.” Under the Copyright Act, however, the Register of Copyrights may allow groups of related works to be registered with one application and one filing fee—a procedure known as “group registration.” *See* 17 U.S.C. 408(c)(1). These fees are also authorized by 17 U.S.C. 708(a)(1). The Office proposes the following schedule of fees, to be codified in 37 CFR 201.3(b).

Group Registrations	Current Fees (\$)	Proposed Fees (\$)	Calculated Cost of Service (\$)
(2) Group registration of contributions to periodicals	85	85	71
(3) Group registration of serials, per issue, with a minimum of 2 issues			
(i) Electronic filing	New Fee	35	76
(ii) Paper filing (Form SE/Group)	25	70	101
(4) Group registration of newspapers/newsletters			
(i) Electronic filing for group newspapers and group newsletters	80 (group newspapers) New Fee (group newsletters)	95	64
(ii) Paper filing for group newsletters (Form G/DN)	80	125	88
(3) Group registration of unpublished photographs (GRUPH) (up to 750 published photographs)	New Fee	100	284
(4) Group registration of published photographs (GRPPH) (up to 750 published photographs)	65 (paper) ³² 55 (electronic)	100	284

³² The paper option for group registration of published photographs was eliminated effective February 20, 2018. *See* 83 FR 2542 (Jan. 18, 2018).

(5) Group registration of updates and revisions to photographic databases	65 (paper) 55 (electronic)	250	N/A ³³
(6) Group registration of updates and revisions to non-photographic databases	85	500	694
(7) Group registration of unpublished works	New Fee	85	N/A ³⁴
(8) Group registration of secure test items	New Fee	75	883

As the data above suggests, processing group registrations can be costly and time-consuming. Indeed, the Office's cost recovery for several categories of group registrations has been quite low. For example, based on the data above, the Office currently recovers only 12% of the cost of group registration of updates and revisions to non-photographic databases through fees for that service. The high cost of processing group registrations is compounded by the fact that group registrations are the second highest volume service the Copyright Office provides according to the Booz Allen Study. Thus, the Office proposes increasing many of the group registration fees to achieve a higher rate of cost recovery. The Office understands the demand for many of these services to be relatively inelastic, especially because, on a per-work basis, the fees are relatively low. Accordingly, achieving a higher rate of recovery should not result in a significant decrease in registrations.

The Office has proposed fees that are fair and equitable, and give due consideration to the objectives of the copyright system. The Office recommends keeping the current fee for group registration of contributions to periodicals the same (\$85). The Office estimates that this service costs \$71, but maintaining the fee at \$85 allows the Office to achieve less than full cost recovery in other categories of fees.

The Office proposes adopting two fees for group registration of serials: a new fee of \$35

³³ Insufficient volume to calculate cost.

³⁴ As discussed below, processing costs for this option are predicted to be equivalent to the processing cost of group registration of contributions to periodicals.

per issue for electronic applications and a fee of \$70 per issue for paper applications (which is an increase from the current \$25 fee for all applications). The calculated cost for electronic applications is \$76, and the cost for paper applications is \$101. The two-tiered fee structure reflects the fact that paper applications are more costly to process than electronic applications. The slightly higher fees should recover more of the costs of providing this service without greatly decreasing demand. Charging a higher amount for paper applications will also encourage the use of the electronic application, which is more efficiently processed.³⁵

The Office also proposes somewhat higher fees for group registration of newspapers and group registration of newsletters. Currently the filing fee is \$80. The estimated cost of processing the paper applications for group registration of newsletters is \$88,³⁶ while the Office estimates that electronic applications for this service cost \$64 to process.³⁷ The Office proposes raising the fee for electronic applications for group registration of newspapers and newsletters to \$95. The \$95 fee provides sufficient cost recovery and should not result in a significant decrease in registrations. The Office proposes raising the fee for paper applications for group registration of newsletters to \$125.³⁸ This increase achieves full cost recovery and should not significantly decrease registrations. Due to the relative inelasticity of the demand for these services, the Office

³⁵ The Office has recently published a notice of proposed rulemaking to update the regulations governing group registration of serials; among other things, the rule would eliminate the paper registration option. 83 FR 22896 (May 17, 2018). Accordingly, if that rule is finalized prior to the adoption of a new fee schedule, the separate paper application fee would not be adopted.

³⁶ The paper application for group registration of newspapers was eliminated in a rule that became effective on March 1, 2018. *See* 83 FR 4144 (Jan. 30, 2018). Though the Office has insufficient data to calculate the costs of applications for group registration of newspapers, the Office estimates that the costs for this category of group registrations would be similar to those associated with group registrations of newsletters.

³⁷ The fee for electronic forms is lower because it does not include the per-transaction cost incurred by the Receipt Analysis and Control (RAC) department that is included in the paper application fee. This is because RAC's involvement in processing electronic forms is minimal. RAC is responsible for scanning and ingesting the information in paper applications.

³⁸ The Office has recently published a notice of proposed rulemaking to update the regulations governing group registration of newsletters; among other things, the rule would eliminate the paper registration option. 83 FR 22902 (May 17, 2018). Accordingly, if that rule is finalized before the adoption of a new fee schedule, the separate paper application fee would not be adopted.

anticipates that the excess revenue from these fees can subsidize some of the more costly group registrations for which full cost recovery is impracticable. Indeed, the group registration option for newspapers and newsletters provides significant cost savings for publishers, who can pay one fee for group registrations rather than file multiple separate registrations per month.

The Office also proposes increased filing fees for group registration of published photographs (“GRPPH”) and group registration of unpublished photographs (“GRUPH”), both of which use the Office’s electronic registration system. These services currently are provided for a \$55 fee. The Office estimates, however, that the cost for providing each of these services is \$284. The Office accordingly proposes offering both services for \$100. The Office believes these new fees will achieve greater cost recovery while maintaining a relatively low fee on a per-work basis for photographers. Specifically, the per-photograph cost is currently \$0.07 if the applicant registers the maximum number of photographs (i.e., 750). The proposed new fee raises that cost only slightly to \$0.12 per photograph if the maximum number of works are registered.

The Office is proposing significant fee increases for the group registration options that apply to databases. The Office currently charges \$85 per application for group registration of updates and revisions to non-photographic databases, and \$65 (paper application) or \$55 (electronic application) per application for group registration of updates and revisions to photographic databases. These applications are quite costly to process, in part because there is no limit on the number of works that may be included in each submission. The Office calculates that applications for group registration of updates and revisions to non-photographic databases cost \$694 to process. Although there was not sufficient volume to calculate the exact cost of processing applications for group registration of updates and revisions to photographic databases, the Office estimates that the cost is equivalent to that for non-photographic databases, because both permit an unlimited number of works to be registered in a single application. For example, the Office noted in its final rule for Group Registration of Photographs, 83 FR 2542 (Jan. 18, 2018), that “at least one database provider registered 57,040 photographs between 2012 and 2016.”

Id. at 2544 n.15 (explaining that this provider filed 29 applications during this period with each containing an average of 1966 photographs). Accordingly, the Office proposes increasing the fees for both services to achieve better cost recovery. Specifically, the Office proposes a \$500 fee for group registration of updates and revisions to non-photographic databases. This registration option can be used to register up to three months' worth of content, which means that the per-day cost over the course of three months is only \$5.55. The Office proposes increasing the fee for group registration of updates and revisions to photographic databases to \$250. The Office also proposes several fees for new group registration options that have recently been or will soon be established through rulemakings. The Office proposes a fee of \$75 for group registration of secure test items. This service is estimated to cost \$883; however, the Office set this fee to be the same as the Standard Application, and anticipates that the cost will be covered to some degree by the secure test examination fee, discussed below. The Office has also recently proposed a new group registration option for unpublished works,³⁹ and expects to finalize that rulemaking before the new fee schedule is finalized. The Office also is considering expanding the categories of works eligible for group registration through rulemaking in the near future. The Office expects to propose that the fee for these services be \$85, which is derived from the analogous fee for group registration of contributions to periodicals, which is expected to impose approximately similar costs.

3. *Other Registration Services*

The Office provides other, less commonly used registration services, as authorized by various provisions of the Copyright Act. The Office proposes the following schedule of fees for such services, to be codified in 37 CFR 201.3(b).

Other Registration Services	Current Fees (\$)	Proposed Fees (\$)	Calculated Cost of Service (\$)
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³⁹ See 82 FR 47415 (Oct. 12, 2017).

(8) Supplementary registration			
(i) Electronic filing	New fee	100	365
(ii) Paper filing (Form CA)	130	150	413
(9) Renewal registrations			
(i) Form RE	100	125	148
(ii) Addendum to Form RE	100	100	67
(10) Preregistration of certain unpublished works	140	200	71
(11) Registration of vessel designs/Correction of an existing registration for a vessel design			
(i) Form D-VH	400	500	6,528
(ii) Form DC	100	100	71
(12) Registration of mask work (Form MW)	120	150	2,176
(13) Registration of a claim in a restored copyright (Form GATT)	85	100	380
(14) Secure test examination fee (per staff member, per hour)	250	250	900
(15) Request for reconsideration (per claim)			
(i) First appeal	250	350	729
(ii) Second appeal	500	700	4,470
(16) Special handling surcharge for registration			
(i) Expedited processing of application	800	1000	67
(ii) Fee for each non-expedited claim using the same deposit	50	50	N/A ⁴⁰
(17) Full term retention of published registration deposit			
(i) Physical deposit	540	540	360
(ii) Electronic deposit	New Fee	220	220
(18) Request for special relief from deposit requirements	New Fee	85	78
(19) Voluntary cancellation of registration	New Fee	150	370

⁴⁰ Insufficient volume to calculate costs.

(20) Matching unidentified deposit to deposit ticket claim	New Fee	40	389
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Several of these registration services are low volume services with a high cost per transaction, reflecting their time-consuming nature. The Office generally proposes raising such fees to achieve higher cost recovery. For example, the fee for both paper and electronic supplementary registration is currently \$130, though the cost per transaction is \$413 for the paper form and \$365 for the electronic form.⁴¹ The Office accordingly proposes setting the fee for the paper supplementary registration application (Form CA) at \$150, and the fee for electronic supplementary registration at \$100 to achieve somewhat better cost recovery.⁴²

There were approximately 500 renewal registrations filed in FY 2016, each of which cost the Office \$148 to process. The Office accordingly proposes raising the current fee for Form RE from \$100 to \$125. The Office proposes keeping the fee for the addendum to the renewal application at \$100. Although processing an addendum costs the Office \$67, this is a relatively low volume service and the excess funds allow for greater overall cost recovery.

Although it costs the Office \$71 to process applications for preregistration of unpublished works, the Office proposes raising the fee for this service from \$140 to \$200 to offset the losses associated with some of the Office's other services. The likely stakeholder group affected by this increase is less price sensitive, and the works at issue are largely commercially viable. This is consistent with the Register's discretionary authority to use fee revenue to offset losses to further "the objectives of the copyright system," 17 U.S.C. 708(b)(4), as discussed above.

Registrations of vessel hull designs (Form D-VH) are relatively low volume, and cost the

⁴¹ As of July 2017, supplementary registration generally must be effectuated through the electronic application, although for some works the paper form (Form CA) must still be filed. *See* 37 CFR 202.6(e)(1)-(3).

⁴² The fee for electronic forms is lower because it does not include per-transaction cost incurred by the RAC department that is included in the Form CA fee, given that RAC's involvement in processing electronic forms is minimal. RAC is responsible for scanning and ingesting the information in paper applications.

Office \$6,528 to process, so the Office proposes raising the fee for such a registration from \$400 to \$500, although this only achieves an 7% cost recovery. The Office proposes keeping the fee for correcting a vessel design registration (Form DC) at \$100—although it costs the Office \$71 to process—to offset some of the lost revenue. The Office spends \$2,176 to process a registration of a mask work (Form MW), so the Office proposes raising the fee from \$120 to \$150 to achieve slightly higher cost recovery. The Office will examine its processes to determine how to more efficiently process vessel hull design and mask work registrations.

For a registration of a claim in a restored copyright (Form GATT), the Office proposes raising the fee from \$85 to \$100 to better cover the \$380 cost of this service.

For the time being, the Office will maintain the secure test examination fee (per staff member per hour) at \$250, although it costs the Office \$900 per staff member per hour. The Office recently adopted an interim rule establishing a group registration option that lets applicants submit an unlimited number of secure test items,⁴³ and the Office is assessing the burdens this new procedure is having on the operations of the Registration Program. The Office may adjust this fee in a later rulemaking based on this assessment.

The Office provides an opportunity for a user to appeal a denied registration, which is called a request for reconsideration. Because the work necessary to process these requests is more time consuming than current pricing reflects, the Office proposes raising the fee for the first request for an appeal from \$250 to \$350 per claim, to offset some of the \$729 cost associated with this service, which requires work by attorney-advisors. The second request for an appeal involves extensive work by senior attorneys at the agency, resulting in a cost to the Office of \$4,470 per appeal. Accordingly the Office proposes raising the fee for a second appeal from \$500 to \$700 per claim.

The Office set several new fees as part of this fee study. The Office is authorized to grant

⁴³ 82 FR 52224, 52226-27 (Nov. 13, 2017).

special relief from the registration deposit requirements in certain circumstances⁴⁴, and the fee for such requests is set at \$85. Because this is a new fee, Booz Allen assessed the time spent on this activity per employee⁴⁵ and the number of requests per year; analyzing that data under the ABC model, Booz Allen estimated that this service costs the Office \$78. The fee therefore seeks to achieve full cost recovery. Booz Allen used this same method to calculate the cost per transaction for voluntary cancellation of registration—a process by which the Office may cancel the registration of invalid claims⁴⁶—at \$370, largely because of the involvement of senior attorneys within the Registration Program in this process. The Office proposes setting this new fee at \$150 to achieve a reasonable cost recovery for this service.

The Office also proposes a fee of \$40 per half-hour for the service of matching “deposit ticket” claims with unidentified deposits. A “deposit ticket” claim is one where the applicant submits an online application and filing fee, but is separately required to submit a physical deposit copy of the work to the Office. When sending the physical deposit copy, applicants are required to attach a system-generated shipping slip to the copy, so that the Office can quickly match the deposit copy to the application.⁴⁷ Often, however, applicants either submit deposit copies without the shipping slip, or include multiple deposits and multiple slips in one package without attaching each slip to its respective deposit. In such cases, Copyright Office personnel expend time manually matching the unidentified deposits to the applications. Although the Office has not previously charged a fee for this service, we intend to do so with the adoption of this new fee schedule. The estimated cost for this service is \$38 per half hour, so this fee seeks to achieve full cost recovery.

The Office proposes to raise the special handling surcharge for expedited processing of a

⁴⁴ See U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES, sec. 1508.8 (3d ed. 2017).

⁴⁵ These requests are reviewed by attorney advisors.

⁴⁶ COMPENDIUM (THIRD) 1807.1.

⁴⁷ *Id.* 1508.2.

registration application from \$800 to \$1000 per claim. The description of the fee as a “surcharge” is to make clear that it applies in addition to any other applicable fee. The actual cost to the Office for this service is estimated to be \$67, which reflects the fact that payment of the special handling surcharge simply moves the requester towards the front of the processing queue. But demand for this service is highly inelastic, so the fees collected help offset the cost of other registration services.

The Office proposes keeping the fee for full-term retention of physical published copyright deposits at \$540. This accounts for projected storage costs for the full span of the full term retention period, which is currently 75 years, but which the Office has indicated it will extend to 95 years to conform with the Copyright Term Extension Act.⁴⁸ The Office proposes establishing a new fee of \$220 for full-term retention of electronic copyright deposits, which seeks to recover the full estimated cost of such a service, \$221.

4. *Recordation*

The Office’s other major service is recordation, which allows individuals to record various documents pertinent to ownership of copyrights. Recordation is important to the Office’s mission, because it creates a public record of copyright ownership. Various provisions of the Copyright Act authorize the establishment of recordation fees. *See, e.g.*, 17 U.S.C. 708(a)(4), (6). The Office proposes the following fee schedule, to be codified at 37 C.F.R. 201.3(c).

Recordation and related services	Current Fees (\$)	Proposed Fees (\$)	Calculated Cost of Service (\$)
(1) Recordation of a document, including a notice of intention to enforce a restored copyright			
(i) Base fee (includes 1 title)			
Paper	105	125	155
Electronic	New fee	95	131

⁴⁸ 82 FR 38859, 38863 n.22 (Aug. 16, 2017).

(ii) Additional transfer (per transfer)	105	95	N/A ⁴⁹
(iii) Additional titles, paper (per group of 10 or fewer titles)	35	60	105
(iv) Additional titles, electronic ⁵⁰			
1 to 50 additional titles	60	60	
51 to 500 additional titles	225	225	
501 to 1,000 additional titles	390	390	
1,001 to 10,000 additional titles	555	555	
10,001 or more additional titles	5,500	5,500	
(2) Recordation of notice of termination			
(i) Base fee (includes 1 title)	105	125	552
(ii) Additional titles (per group of 10 or fewer titles)	35	60	105
(3) Special handling surcharge for recordation of documents	550	700	92

The Office recorded 10,865 documents in Fiscal Year 2016, at an estimated cost of \$155 per document. The Office recommends raising the base recordation fee, which includes the cost of indexing one title, to \$125 to recover a projected 80% of the cost of this service.

The Office is also proposing a new fee for electronic submissions to record documents, in anticipation of the development of a new electronic recordation system at some point during the period that the new fee schedule is in place. The fee for such submissions is set at \$95, based on our current estimate of processing costs (\$131). This will achieve a 73% cost recovery. This electronic filing fee is set lower than the paper filing fee to discount the RAC costs associated with paper filings (*i.e.*, handling and transporting, scanning, data entry) that do not accrue for

⁴⁹ Insufficient volume to calculate costs.

⁵⁰ These fees were explained and established as part of a separate fee study submitted to Congress in August 2017, and became effective in December 2017. *See* U.S. Copyright Office, *Proposed Schedule and Analysis of Copyright Recordation Fee to Go into Effect on or About December 18, 2017* (Aug. 18, 2017), available at <https://www.copyright.gov/policy/feestudy2017/fee-study-2017.pdf>.

electronic filings. The Office may, however, reassess its costs once the system is developed and adjust the fee accordingly.⁵¹

The Office proposes reducing the per-transfer fee for additional transfers to \$95. This fee is charged when a single document involves multiple transfers or other transactions among more than two parties. Each transaction has to be separately indexed by the recordation specialist, and so the Office charges an additional fee for each additional transaction in the document. That fee has traditionally been the same as the base fee for recordation of a document. But that base fee accounts for the costs incurred by RAC upon intake of the paper document. Because those costs are incurred only once *per document*, a lower fee is appropriate for additional transfers in that document.

When recording a document, the Office must index information about each of the copyrighted works to which the document pertains.⁵² This indexing is, to a large degree, a manual process, and the Office charges fees beyond the base fee for works in a document beyond the first one (referred to as “additional titles”) to cover these processing costs. The Office proposes increasing the fees for additional titles submitted by paper. When the works associated with the document are submitted only on paper form, they must be manually typed into the Office’s database to be indexed. This, obviously, involves significant processing costs, but the Office has traditionally kept the fee low so as to avoid discouraging use of the recordation system. In recent years, however, the Office began accepting electronic title lists that are submitted with paper documents. These are much easier for the Office to process. Although initially the Office’s fee schedule did not distinguish between titles submitted electronically and on paper, in December 2017, the Office adopted a much lower fee structure for electronic title list, which it does not

⁵¹ Because this fee is for a system that is not yet in place, and for which the Office has no volume data, the Office’s current fee model, as provided on the website, does not attempt to model the effects of this fee on the Office’s overall fee receipts.

⁵² See, e.g., 17 U.S.C. 205.

propose adjusting further here.⁵³ Accordingly the Office is comfortable increasing the fee for additional titles submitted solely on paper, to better account for the manual processing costs and as a further inducement to submitting electronic title lists. (To be clear, when a remitter submits a paper document and an electronic title list, they will pay the paper fee for the first title (\$105) and the electronic fee for the additional titles (starting at \$60 for up to the first 50 additional titles)).

The Office proposes an increase for the fee for recordation of notices of termination to \$125 (from \$105), which achieves only 23% cost recovery. This accounts for the fact that the Office charges a flat fee for this service, though some terminations require additional indexing work, such as when the notice terminates multiple transfers of ownership of the same work. The Office also engages in a more robust examination of terminations, to ensure that authors are complying with the relevant time limits set forth in the statute, and can cure any defects in a timely manner.

The special handling surcharge for recordation of documents has been raised from \$550 to \$700, which will be charged in addition to the otherwise applicable processing fee. This is consistent with special handling surcharges the Office charges for other services.

5. Record Retrieval, Search, and Certification Services

Record Retrieval, Search, and Certification Services (RRC) provides copies of completed and in-process registration and recordation records, search reports, and registration deposit materials. By the time this fee schedule goes into effect, RRC will also have taken on responsibility for providing retrieval, search, and certification services for Licensing Division records. RRC also administers the Office's Records Reading Room and the Historic Public Records Program. The Office proposes the following fee schedule for records retrieval, search, and certification services, to be codified at 37 CFR 201.3(c).

⁵³ See 82 FR 52221 (Nov. 13, 2017).

Record Retrieval, Search, and Certification Services	Current Fees (\$)	Proposed Fees (\$)	Calculated Cost of Service (\$)
(1) Provision of an additional certificate of registration	40	55	285
(2) Estimate of retrieval or search fee (flat fee; credited to retrieval or search fee)	200	200	Varied ⁵⁴
(3) Retrieval and processing of Copyright Office records (per hour) (1 hour minimum for paper records; half hour minimum for electronic records, with quarter hour increments)	200	200	276
(4) Copying fee (all media)	Varied	12	
(5) Search report prepared from official records, including Licensing Division records (per hour, 2 hour minimum)	200	200	661
(6) Certification of copyright office records, including search reports (per hour, 1 hour minimum)	200	200	314
(7) Litigation statement (Form LS)	New Fee	100	102
(8) Special handling fee for records retrieval, search, and certification services (per hour, 1 hour minimum, applies in lieu of hourly fees above)	Varied	500	

Location and retrieval of records can be time-consuming, and requires specialized knowledge. In addition, as the table above indicates, the costs of the RRC's services vary greatly, largely because the complexity of each service varies. At the same time, requesters often are seeking multiple services (e.g., location and retrieval of records, creation of a search report, and certification of that report).

In general, the proposed fee schedule above is intended to be simpler and easier for the public to understand and for the Office to apply. For instance, currently the fee charged for copying of Copyright Office records varies widely based on the type of media involved (paper,

⁵⁴ The cost of creating an estimate per hour is roughly equivalent to the hourly cost for retrieval (\$318) and/or search (\$661), as applicable.

audiocassette, videocassette, CD etc.). The Office above proposes simplifying the copying fee to \$12 regardless of media. Similarly, rather than try to distinguish among these various services, the Office proposes maintaining a simpler fee structure by maintaining a \$200-per-hour fee in place for most RRC services.

The creation of an estimate itself can be costly, as it requires Office personnel to conduct a preliminary search of the Office's records. The Office proposes maintaining that fee at a flat \$200 level, which can be credited against the final search and retrieval fee.

The Office proposes raising the fee for an additional certificate of registration from \$40 to \$55 to achieve greater cost recovery; this service costs \$285 to provide. The Office also proposes setting a new fee of \$100 for litigation statements,⁵⁵ to achieve almost full cost recovery.

In addition, the Office currently charges three different special handling fees for the different kinds of services RRC provides. The Office instead proposes adopting a standard \$500 hourly fee for special handling of records retrieval, search, and certification services, which would apply in lieu of the \$200-per-hour fees that are otherwise charged for such services. Because payment of the special handling fee simply moves the requester towards the front of the queue, the revenues from this service exceed the costs. Those excess revenues, however, help offset the cost of other services.

B. Miscellaneous Fees

The Office proposes the following miscellaneous fees, as authorized by 17 U.S.C. 708 and other provisions of the Copyright Act, to be codified at 37 C.F.R. 201.3(e).

Miscellaneous Fees	Current Fees (\$)	Proposed Fees (\$)	Calculated Cost of Service (\$)
(1) Receipt for mandatory deposit without registration (17 U.S.C. 407)	30	30	N/A ⁵⁶

⁵⁵ See 37 CFR 201.2; COMPENDIUM (THIRD) 2400.

⁵⁶ Insufficient volume to calculate costs.

(2) Notice to libraries and archives (17 U.S.C. 108(h))	50	50	N/A ⁵⁷
Each additional title	20	20	N/A ⁵⁸
(3) Designation of agent (17 U.S.C. 512(c)(2))	6	6	52
(4) Request to remove PII from online catalog			
Initial request	130	100	N/A ⁵⁹
Reconsideration of denied request	60	60	N/A ⁶⁰
(5) Service charge for Federal Express mailing	45	45	35
(6) Service charge for delivery of documents via fax	1	1	35
(7) Overdraft of deposit account	250	285	280
(8) Dishonored replenishment check for deposit account	100	500	513
(9) Uncollectable or nonnegotiable payment	30	115	110

The Office had insufficient volume to compute a transaction cost for the following fees, and therefore recommends keeping the cost of these services at their current levels or reduce them: receipt for mandatory deposit without registration; notice to libraries and archives under 17 U.S.C. 108(h); initial request to remove requested personally identifiable information (PII) from an online catalogue; and reconsideration of a denied request to remove PII.

Taking into account labor and costs, the Office estimates that it costs \$35 to deliver documents by fax and by Federal Express mailing. The Office proposes that the \$1 and \$45 fees for such services, respectively, remain unchanged.

The Office proposes raising the payment processing service charges to account for a near complete cost recovery for those types of charges. Thus, the Office proposes raising the fee for overdraft of a deposit account from \$250 to \$285 to account for the estimated cost of \$280. The

⁵⁷ Insufficient volume to calculate costs.

⁵⁸ Insufficient volume to calculate costs.

⁵⁹ Insufficient volume to calculate costs.

⁶⁰ Insufficient volume to calculate costs.

Office proposes raising the fee for dishonored replenishment checks for deposit accounts from \$100 to \$500 to account for the \$513 cost of such service. And the Office proposes raising the fee for uncollectable or nonnegotiable payments from \$30 to \$115 to recover the \$110 it costs the Office to address such a situation.

Finally, the Office proposes keeping the fee for designation of an agent under 17 U.S.C. 512(c)(2) at \$6, despite its \$52 cost. That higher cost figure largely reflects the cost of staff time during initial development of a new electronic designation of agent system, and the Office anticipates that the ongoing costs will be lower now that system development is largely complete.

C. Licensing Division Fees

The Licensing Division administers the various statutory licenses and related provisions, and also provides services to the Copyright Royalty Board, which oversees rate determinations and disbursements for certain statutory and compulsory licenses. Specifically, the Licensing Division administers statutory licenses for secondary transmissions by cable systems (section 111), statutory licenses for ephemeral recordings (section 112); statutory licenses for the public performance of sound recordings by means of a digital audio transmission (section 114), compulsory licenses for making and distributing phonorecords (section 115), statutory licenses for secondary transmissions for satellite carriers (section 119), statutory licenses for secondary transmissions by satellite carriers for local retransmissions (section 122), and statutory obligation for distribution of digital audio recording devices and media (section 1003).

The Licensing Division collects fees for the filing of cable and satellite statements of account, to reimburse some of the costs of administering the cable and satellite licenses. It deducts its operating costs from the royalty fees it collects, and invests any remaining balance in interest-bearing securities with the U.S. Treasury for later distribution to copyright owners. Unlike other fees collected by the Copyright Office, the revenue from filing fees under sections 111, 119, and 122 may not exceed 50% of certain costs associated with the Licensing Division's administration of the statutory licenses under those provisions. *See* 17 U.S.C. 708(a).

The Office proposes the following Licensing Division fees to be codified at 37 C.F.R.

201.3(f).

Licensing Division Fees	Current Fees (\$)	Proposed Fees (\$)	Calculated Cost of Service (\$)
(1) Statement of account for cable systems (17 U.S.C. 111)			
(i) Form SA1	15	20	369
(ii) Form SA2	20	30	369
(iii) Form SA3	725	1,000	612
(2) Statement of account for satellite systems (17 U.S.C. 119 or 122)	725	1,000	3,186
(3) Statement of account amendment for cable systems, satellite systems, and digital audio recording device distributors	150	50	428
(4) Recordation of a notice of intention to make and distribute phonorecords (17 U.S.C. 115)	75	75	291
Additional titles (per group of 1 to 10 titles) (paper filing)	20	20	
Additional titles (per group of 1 to 100 titles) (electronic filing)	10	10	
(5) Initial or amended notice of use of sound recordings (17 U.S.C. 112 and 114)	40	50	300 ⁶¹
(6) Recordation of certain contracts by cable television stations located outside the 48 contiguous states	50	50	N/A ⁶²

For the filing of statements of account for cable systems under the section 111 statutory license, the Office has attempted to streamline the fees and improve cost recovery. The Office proposes a flat fee for paper and electric versions of Forms SA 1, 2, and 3. The fees for SA1 and

⁶¹ This amount reflects the calculated cost for processing an initial notice of use of sound recordings. There is insufficient data to calculate the cost of an amended notice.

⁶² Insufficient volume to calculate costs.

SA2 recover a negligible amount of the costs associated with those forms, but the Office is proposing only modest increases because the companies that file those statements are relatively less able to bear increases in costs. At the same time, the Office proposes that the fee for Form SA3, which tends to be filed by companies with a greater ability to bear a higher filing fee, be set above the cost associated with that Form to subsidize the other fees in this category. The Office proposes a fee increase for statements of account for satellite systems achieve a somewhat greater cost recovery.

The fee for an amended statement of account filed by cable systems, satellite systems, and digital audio recording device distributors will be reduced to \$50. The Office notes, however, that it intends to charge that amendment fee in a wider range of circumstances. In particular, the Office does not always charge the amendment fee when Office examination uncovers an error that requires the filing of an amended statement of account; the Office plans to regularly charge that fee in the future.

The Office has proposed fees associated with section 111, 119, and 122 licenses to remain, in the aggregate over the next five year period, below 50% of the Office's reasonable expenses to administer the cable and satellite licensing programs. Because the costs of administering these licenses are evaluated based on when the fees are identified, not when the statements of account are submitted, the estimates for these costs are to some degree uncertain. However, the Office has taken into account that the volume of cable statements of account projected to continue to decrease, as they have done for a number of years. In particular, based on the current trend line, the Office estimates that cable system filings will decrease from just over 5,000 in the most recent fiscal year to approximately 3,765 by fiscal year 2023. (Satellite filings are already fairly low, with only 9 in fiscal year 2017.) Moreover, future volume of filings may decrease more rapidly than the Office has estimated, especially if the cable industry undergoes significant consolidation. Because of this uncertainty, the Office has proposed fees for cable and satellite statements of account in a conservative manner, to ensure that, over the five-year period,

revenues do not breach the 50% threshold established by statute. In particular, based on current estimates, fee recovery is estimated to be 44% in fiscal year 2019, and will decrease to 39% in fiscal year 2023. The Office will continue to monitor costs and filing volume to ensure that it complies with the statutory limit.

The Office proposes keeping the fee for section 115 notices at their current levels. As the Booz Allen Study notes, “subsequent to FY2016, the Office received a significant increase in electronic Section 115 notices with large numbers of titles, and has devoted resources to developing a new system to ingest and process these large filings.”⁶³ Though the model references projections for FY 2016, the Office notes that it has received a significant increase in the numbers of additional titles in subsequent years. To be sure, the Office acknowledges that the amount of fees received from such filings significantly exceeds the costs of processing them.⁶⁴ But, as the Booz Allen Study notes, “there is significant additional added convenience that the electronic filing option provides to filers.”⁶⁵ Indeed, the legal benefits obtained by licensees with the filing of section 115 notices with the Office are noteworthy—namely, the ability to obtain a statutory license to make and reproduce musical works, without knowing the identify of any of the copyright owners of those works and without paying those copyright owners the otherwise-required royalty.⁶⁶ As a result, demand for this service appears to be relatively inelastic, and maintaining fees at the current level helps the keep registration and recordation fees relatively low. This in turn benefits copyright owners and users alike, by making it more likely that ownership of

⁶³ Booz Allen Study at 18.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ 17 U.S.C. 115(b)(1); *see also id.* 115(c)(1) (“To be entitled to receive royalties under a compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.”).

musical works (and other works) can be identified. Finally, the fee may largely be obviated by pending legislation.⁶⁷

The Office proposes raising the fee for notices under sections 112 and 114 from \$40 to \$50 to achieve greater recovery of the \$300 cost associated with such notices. The Office did not have sufficient data to evaluate the fee for recordation of certain contracts by cable television stations located outside the 48 contiguous states, so the Office proposes keeping it at \$50.

IV. Technical Amendments

The Office will adopt technical amendments as needed to conform existing regulations to the changes proposed in this notice.

Dated: May 18, 2018.

Sarang Vijay Damle,
General Counsel and
Associate Register of Copyrights

[BILLING CODE 1410-30-P]

⁶⁷ See Music Modernization Act, H.R. 5447, 115th Cong. (2018); *see also* Music Modernization Act, S.2334, 115th Cong. (2018).

